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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/247,349	05/03/1999	CARLOS DE LA HUERGA	250591.90112	7519

26710 7590 04/29/2003

QUARLES & BRADY LLP  
411 E. WISCONSIN AVENUE  
SUITE 2040  
MILWAUKEE, WI 53202-4497

EXAMINER

COBY, FRANTZ

ART UNIT	PAPER NUMBER
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2171

DATE MAILED: 04/29/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.  
09/247,349

Applicant(s)  
Carlos De La Huerga

Examiner  
Frantz Coby

Art Unit  
2171

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 16, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19, 22-31, and 33-43 is/are allowed.
- 6) ☒ Claim(s) 20, 21, and 32 is/are rejected.
- 7) ☒ Claim(s) NONE is/are objected to.
- 8) ☒ Claims NONE are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3, 17, 2 6) ☐ Other:

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This is in response to an RCE filed on April 16, 2003 in which claims 1-43 are presented for examination.

**Claims Status**

Claims 1-43 are pending.

***Information Disclosure Statement***

1. The information disclosure statement filed on July 23, 2002; April 08, 2002 and April 16, 2003 are all in compliance with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. They have been placed in the application file, and the information referred to therein has been considered as to the merits.

***Specification***

2. The abstract of the disclosure is objected to because it is consisted of a single sentence. Correction is required. See MPEP § 608.01(b).

***Claim Objections***

3. Claim 32 is objected to under 37 CFR 1.75© as being in improper form because it is dependent on itself. Accordingly, the claim 32 not been further treated on the merits.

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***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent No. 5,903,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because the independent claims of the present application, namely claims 20-21, recite collecting a group of related data in a computer system. U.S. Patent no. 5,903,889 recites collecting a group of related

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data in a computer system as well. The omission of the step of “determining in which of said master control and said secondary control files said reference is to be placed by using information in a list of data types” in the presented claims does not prevent occurrence of collecting a group of related data in a computer system to be achieved. Therefore, one of ordinary skill in the art at the time of the invention would have found it obvious to have omitted the step of determining for the purpose of permitting data retrieval to be achieved more rapidly and efficiently. The Applicant is reminded that Omission of element and its function in combination is obvious expedient if remaining elements perform same function as before. In re KARLSON, 136 USPQ 184 (CCPA 1963). In this case, the same function of collecting a group of related data in a computer system *is achieved in both the U.S. Patent 5,903,889 and the present application.*

***Allowable Subject Matter***

5. Claims 1-19 and 22-31 and 33-43 are allowable over the prior art of record.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

**A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within**

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**TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.**

**Any response to this action should be mailed to:**

Commissioner of Patents and trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 305-9051, (for formal communications  
intended for entry)

**Or:**

(703) 308-5357 (for informal of draft  
communications, please label "PROPOSED" or "DRAFT")


Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington.

VA., Sixth Floor (Receptionist).

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz Coby whose telephone number is (703) 305-4006. The examiner can normally be reached Monday through Friday from 9:30 A.M. to 5:00 P.M.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (703) 308-14367. The Fax phone number for this Group is (703) 746-7238; (703) 746-7239; (703) 746-7240.

  
**FRANTZ COBY**  
**PRIMARY EXAMINER**

*Technology Center 2171*

April 23, 2003